

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CIV-07-0213 JH/LCS
CR-04-783 JH

JOSE LUIS REYES-ARMENDARIZ,

Defendant.


MEMORANDUM OPINION AND ORDER

This matter is before the Court sua sponte for preliminary consideration of Defendant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 35) filed March 5, 2007. *See* 28 U.S.C. § 2255 R. 4(b). Defendant asserts that his sentence is unreasonable and the Court failed to properly consider sentencing factors or to state its reasons for the sentence.

Defendant pled guilty to an indictment charging him with re-entry of a deported alien previously convicted of an aggravated felony under 8 U.S.C. § 1326(a)(1), (2), and (b)(2). On appeal, the United States Court of Appeals for the Tenth Circuit affirmed Defendant's sentence. *See United States v. Reyes-Armendariz*, 163 F. App'x 688 (10th Cir. Jan. 18, 2006). As the Court of Appeals stated upon review of Defendant's sentence, this Court "properly considered the sentencing factors in § 3553(a), . . . [and] 'state[d] in open court the reasons for its imposition of the particular sentence.' " *Id.* at 690. The Court of Appeals concluded that Defendant's sentence was not "unreviewable or unreasonable." *Id.* The substantive sentencing issues in Defendant's motion have thus been expressly considered by the Court of Appeals in affirming his sentence. These matters are

res judicata and will not be revisited by way of a § 2255 motion. *Kaufman v. United States*, 394 U.S. 217, 227 n.8 (1969); *Reed v. Farley*, 512 U.S. 339, 358 (1994). Defendant is not entitled to relief, *see* rule 4(b), and the § 2255 motion will be dismissed.

IT IS THEREFORE ORDERED that Defendant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 35) filed March 5, 2007, is DISMISSED with prejudice; and judgment will be entered.


UNITED STATES DISTRICT JUDGE